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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Dacosta) Art Unit: 2445
)
Serial No.: 10/782,345) Examiner: Hossain
)
Filed: February 19, 2004) 50T5722.02
)
For: SYSTEM AND METHOD FOR) January 27, 2010
AUTHENTICATING COMPONENTS IN) 750 B STREET, Suite 3120
WIRELESS HOME ENTERTAINMENT) San Diego, CA 92101
SYSTEM)

RENEWED APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

Appellant filed a pre-appeal request for review on July 9, 2009, which was never responded to. Concerned that the time for filing an appeal was winding down, Appellant called the examiner who assured Appellant that a Brief should be filed and prosecution would not be reopened. Prosecution was, however, reopened. Appellant suggests that churning of prosecution should now conclude and this case either be allowed or jurisdiction transferred to the Board.

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(1) Real Party in Interest

The real parties in interest are Sony Corp. and Sony Electronics, Inc.

(2) Related Appeals/Interferences

No other appeals or interferences exist which relate to the present application or appeal.

(3) Status of Claims

Claims 10-13 and 30 are pending and rejected, which rejections and claims are appealed, and Claims 1-9 and 14-29 have been canceled.

(4) Status of Amendments

No amendments are outstanding.

(5) Summary of Claimed Subject Matter

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 10 sets forth a home entertainment system that includes a wireless system server (12, figure 1; page 5, line 3) having a primary communication system (16, figure 1; page 6, line 8) and a wireless component (24, figure 1, page 7, line 10) having a primary communication system (26, figure 1; page 7, line 12) configured for communicating with the primary communication system of the server. The component sends configuration information to the server using a secondary communication system

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(28, figure 1; page 7, line 19) that is out-of-band with the primary systems. The configuration information is exchanged between the server and component only when the distance between them is within a communication distance and a user manipulates a button (23, figure 1; page 7, line 8) on the server and/or (34, figure 1; page 8, line 3) on the component (page 9, line 5 - page 10, line 5).

(6) Grounds of Rejection to be Reviewed on Appeal

All pending claims (10-13 and 30) have been rejected under 35 U.S.C. §103 as being unpatentable over Sayers, USPP 2005/0083882 in view of Official Notice.

(7) Argument

The examiner now recognizes the error in his former reliance on the button-pushing discussion in paragraphs 39 and 40 of Sayers, belatedly agreeing that "Sayers does not specifically teach that the user must manipulate at least one button on at least one server or the component for the communication to take place, as claimed", Office Action, page 3, lines 10-12. Notwithstanding this admission, the rejection unfortunately and, more importantly to this appeal, erroneously descends into mischaracterizations of select portions of Sayers to support hypothetical conjectures about what is well known, followed by an inept attempt to demonstrate the allegation of what is "well known" by reference to an inapposite reference (Lo).

Beginning with the mischaracterizations of Sayers, starting on line 12 of page 3 the rejection alleges that Sayers, paragraphs 29 and 31 teach that "the base station and the configuration transmitter may be placed...in a home". With respect, neither paragraph 29 nor 31 teaches anything about placement of the base station, but only the configuration transmitter, and neither paragraph teaches that it can be placed in a "home." Because the analysis underpinning the rejection is predicated on clear factual error as

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to what Sayers teaches, the rejection should be reversed.

Turning to the hypothetical conjectures, on line 14 of page 3 the rejection alleges that "it is well known in the art for the user to press a button to effectuate the communication between the server and the wireless component. This can constitute pressing "OK" on the GUI of one of the devices, for example." However, this conjecture is (1) without a citation to evidentiary support and (2) ignores the fact that Claim 10 does not simply recite "press a button to effectuate communication" but rather something far more specific. For lacking evidentiary support and in any case for failing to reach *the actual language of the claim*, the rejection merits reversal for lacking on an unsound conjecture.

Continuing the deconstruction of the attempt to paper over the shortfall in the evidence, the examiner next alleges that "without such a mechanism, any user within range of the base station could receive the secondary communication, thus defeating the purpose" of the invention. Wrong, and considering that the examiner's own reference directly contradicts this speculation, spectacularly so. Consider that paragraph 38 of Sayers explicitly and unambiguously teaches that the examiner's sought-after security can indeed be achieved other than by the examiner's postulated necessity, namely, by using the very thing Sayers teaches (the IR remote control device 510) is desirable to relieve the user from the "inconvenient" chore of having "to carry the wireless device to a location near the configuration transmitter". For being based on speculation that the evidence of record directly and unambiguously contradicts, the rejections should be reversed.

And now, as the Board no doubt expects it to, Appellant must comment on the part of Sayers quoted above. *KSR Int'l Co. v. Teleflex Inc.*, 398 U.S. 550, 127 S.Ct. 1727 (2007) made clear that "rejections based on obviousness grounds cannot be based on mere conclusory statements", 550 U.S. at 418, 127 S.Ct. at 1741. The Court upheld the obviousness challenge because, in fact, "KSR provided convincing *evidence*" of obviousness, 550 U.S. at 400, 127 S.Ct. at 1731 (emphasis mine).

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As the Board also knows, KSR suggested that, as the law of obviousness has long held, a teaching away is probative of patentability, 550 U.S. at 416, 127 S.Ct. at 1740, see, e.g., *Monarch Knitting Machine Corp. v. Sulzer Morat GmbH*, 139 F.3d 877 (Fed. Cir. 1998) (reference may be said to teach away when the skilled artisan, upon reading it, would be discouraged from the path taken by the inventor). Here, Sayers teaches the skilled artisan that it is inconvenient to force the user to transport his or her wireless device to the configuration transmitter, which itself is intended to be permanently located in a secure space such as behind a guard desk (paragraph 31) or cash register (paragraph 30) to which it is desired to force the user to go to gain access. This teaching openly and unambiguously discourages the skilled artisan from eschewing the small remote control of Sayers and instead doing what Claim 10 requires but which paragraph 38 of Sayers teaches against. Because the rejections rest on a reference that teaches away from Claim 10, they merit reversal.

Completing the evisceration of the rejection of Claim 10, paragraph 46 of the Lo publication, trotted out on page 4 of the Office Action to buttress the improper taking of official notice, demonstrates *only* that it was known to push a button *on a washing machine* or a "user terminal" to get the *washing machine* to start. Appellant is not claiming a start button, much less for a washing machine. A washing machine "start" button, regardless of where it is located, is demonstrative of nothing regarding whether a particular way to execute a handshaking exchange of configuration information was "well known", much less that it was "well known" to do something that Sayers never taught or envisioned. Because the taking of official notice rests on evidence that does not support the proposition for which it is being used, the rejections merit reversal.

The allegation in the Office Action on page 4, lines 3-5 that Sayers, paragraphs 20-23 and 26-28 teaches a personal area network is incorrect. The relied-upon portions of Sayers teach no such thing. Sayers does not appear to contemplate use of PANs. For being based on a clearly erroneous finding of

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fact as to what Sayers teaches, the rejection of Claim 11 is further reversible.

The allegation in the Office Action on page 4, lines 8-13 that it is well known to swap the set-top box of Claim 13 for the personal computer of Sayers is without evidentiary basis. Additionally, set-top boxes are used for different purposes than are computers and manifestly the two disparate device are not known as interchangeable equivalents. The rejection of Claim 13 is further reversible for resting on a conjecture of what is "well known" without evidentiary support or logical basis in fact.

Respectfully submitted,



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APPENDIX A - APPEALED CLAIMS

10. A home entertainment system, comprising:
- at least one wireless system server having at least a primary communication system; and
- at least one wireless component having at least a primary communication system configured for communicating with the primary communication system of the server, wherein the component sends configuration information to the server using a secondary communication system that is out-of-band with the primary systems, wherein the configuration information is exchanged between the server and component only when the distance between them is within a communication distance and a user manipulates at least one button on at least one of the server, and the component.
11. The system of Claim 10, wherein the secondary communication systems are personal area networks (PAN).
12. The system of Claim 10, wherein the primary communication system is an 802.11 system.
13. The system of Claim 12, wherein the server is established by a set-top box receiver.
30. The system of Claim 10, wherein the configuration information includes an encryption key, a media access address, and a network name.

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APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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